

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)

DONNY BRURELL BUCKLEY,)
ALYCIA MARQUESE BUCKLEY, By their parent)
and next friend, Ruby L. Buckley, on)
behalf of themselves and all Negro)
school age children residing in the)
area served by original defendants)
herein,)

Intervening Plaintiffs,)

INDIANA STATE TEACHERS ASSOCIATION,)
)
Intervening Plaintiff,)

-vs-

THE BOARD OF SCHOOL COMMISSIONERS OF THE)
CITY OF INDIANAPOLIS, INDIANA;)
ESPERANZA ZENDEJAS, as Superintendent of)
Schools; et al.,)
Defendants,)

FRANK L. O'BANNON, as Governor of the)
State of Indiana;)
JEFFREY A. MODISSETT, as Attorney General)
of the State of Indiana;)
SUELLEN REED, as Superintendent of)
Public Instruction of the State of)
Indiana;)
MORRIS WOODEN, as Auditor of the State)
of Indiana;)
JOYCE ELAINE BRINKMAN, as Treasurer of)
the State of Indiana;)

THE METROPOLITAN SCHOOL DISTRICT OF)
DECATUR TOWNSHIP, MARION COUNTY,)
INDIANA;)

THE FRANKLIN TOWNSHIP COMMUNITY SCHOOL)
CORPORATION, MARION COUNTY, INDIANA;)

THE METROPOLITAN SCHOOL DISTRICT OF)
LAWRENCE TOWNSHIP, MARION COUNTY,)
INDIANA;)

NO. IP 68-C-225

MEMORANDUM OF OPINION

February 27, 1997

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THE METROPOLITAN SCHOOL DISTRICT OF)
 PERRY TOWNSHIP, MARION COUNTY, INDIANA;)
)
 THE METROPOLITAN SCHOOL DISTRICT OF)
 WARREN TOWNSHIP, MARION COUNTY, INDIANA;)
)
 THE METROPOLITAN SCHOOL DISTRICT OF)
 WAYNE TOWNSHIP, MARION COUNTY, INDIANA;)
)
 THE INDIANA STATE BOARD OF EDUCATION,)
 a public corporate body;)
)
 Added Defendants.)

MEMORANDUM OF OPINION

This cause comes before the Court on the motion of the defendant Board of School Commissioners of the City of Indianapolis ("IPS" or "Board") seeking a finding and declaration from the Court that it has achieved unitary status and should be released from Court supervision. With respect to the students who would be attending IPS schools but for this Court's judgment of July 9, 1979, but who attend school in the defendant township school districts pursuant to such judgment, IPS proposes that such students be returned to it under a transition plan, phasing out the transfers one year at a time for a period of thirteen years.

The original plaintiff, United States of America, and the intervening plaintiffs Buckley each filed a response opposing the motion of IPS. The State of Indiana defendants filed a response, deferring taking a position on the motion until presentation of evidence. Intervening plaintiff Indiana State Teachers Association filed a response taking no position on the motion of IPS for a declaration of unitary status. The added township school defendants

filed responses in which they oppose the IPS motion regarding inter-district transfers and assert that the Court's interdistrict order is or should be made permanent. A hearing was had on the various issues January 21-24, 1997.

The Court's original order in this case, insofar as student assignment within IPS is concerned, (the intradistrict remedy) required that each school have an African-American enrollment of not less than 15 percent. To accomplish this result a number of students were required to be bused. The Board's Select Schools plan, approved by the Court in 1993, gave parents of school children a choice as to which school or schools their children would attend, it being the belief of the Board that neighborhood schools would be selected, and busing reduced. The proponents of this plan could not have been more wrong. As shown by IPS Exhibit 15, parents elected to send their children to as many as 45 schools other than the closest one, with the result that busing substantially increased, rather than the reverse, thus resulting in considerably more expense. Apparently parents and students did not consider it a hardship to ride to school, particularly on cold winter days.

IPS seeks to have the Court declare that it is now "unitary," and thus released from future court supervision. However, it has advised the Court as to how it would assign its students for the coming 1997-98 school year. The principal features of this plan are that it would scrap the Select Schools system, returning to assignment within individual boundaries, and that it would return to the Court's original requirement of a minimum of 15 percent African-American students in each school. The Court is not fully advised as

to whether IPS should be declared "unitary" in whole or in part, and will therefore take additional evidence on this issue at a further hearing to be scheduled in the near future. However, the Court at this time approves the Board's intradistrict plan for 1997-98, insofar as it deals with the students residing in the territory now served by it. As will be seen, the Court's interdistrict order will remain intact.

The Board apparently assumes that at such time as it may be declared "unitary," students residing in the transfer areas and attending township schools will be returned to it. This assumption is incorrect. The Court's previous findings, affirmed by the Court of Appeals for the Seventh Circuit, are that IPS, the Housing Authority, and the State of Indiana were each guilty of de jure segregation.¹ However, the results of the acts of such defendants were not identical. The results of the acts of IPS were to create a dual school system, with white and black children being educated in separate schools containing few or none of the other race, with teachers likewise color coordinated. The acts of the Housing Authority ("HACI") prevented African-American families from residing in the townships. The acts of the State prevented the township schools from becoming a part of IPS when Uni-Gov was enacted, contrary to long established state law, thereby depriving IPS of the opportunity to assign some of its pupils to (formerly) township schools.

¹ 419 F.Supp. 180 (1975), aff'd 541 F.2d 1211 (1976); 506 F.Supp 657 (1979), aff'd 637 F.2d 1101, cert. denied 449 U.S. 838 (1980).

Just as the acts of the three defendants had different if similar results, so did the Court impose different equitable remedies: IPS was ordered to desegregate its schools, faculty and staff, among other things; HACI was permanently enjoined from erecting additional public housing for families within the territory served by IPS; the State was ordered to pay the costs incident to the transportation, education, etc., incident to educating approximately 7,000 black children in the six suburban schools (the inter-district remedy). The rationale for the transfer of African-American school children to the suburban schools was that but for the action of HACI and the State, a similar number of such students would have been residing in the suburbs and attending such schools. For this reason it was the sense of this Court's order, and it was this Court's intent, that the order would be continuing and permanent. The transfer areas selected by IPS have become a part of the townships to which their African-American students have been assigned, insofar as the education of such students and their successors are concerned.

As was pointed out in the memorandum of the United States, the position of IPS regarding the transfer pupils is predicated upon a mechanical application of intradistrict caselaw to this inter-district fact pattern, with consequent disregard to overarching remedial principles recently reaffirmed by the Supreme Court in United States v. Virginia, 518 U.S. ____, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996):

A remedial decree . . . must be shaped to place persons unconstitutionally denied an opportunity or

advantage in "the position they would have occupied in the absence of [discrimination]." See Milliken v. Bradley, 433 U.S. 267, 280, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977).

The constitutional violation in this case is the categorical exclusion of African-American children from township schools through placement of public housing within IPS boundaries only and the adoption of Uni-Gov under circumstances which foreclosed African-American children from attending desegregated schools in the townships or within an expanded Indianapolis.

A proper remedy for an unconstitutional exclusion, we have explained, aims to "eliminate [so far as possible] the discriminatory effects of the past" and to "bar like discrimination in the future."
[citations omitted]

Ibid. These remedial principles preclude reconcentration of African-American children within IPS and discriminatory re-exclusion of African-American children from the township school systems; IPS's prayer to terminate the interdistrict remedy, perhaps unwittingly, is a request to reinstitute unconstitutional discrimination.

As stated, each of the six receiving township schools has stated in its response to the IPS motion that it desires to continue to receive African-American students from their designated areas. The superintendents of each school so testified at the hearing. A poll of parents in the transfer areas, taken by IPS in 1996, reflected that 78 percent of them approved of the existing arrangements. All of the township schools presently pick up and return the African-American children in their own buses. Most of them have arranged to have an African-American person on their school boards, and allow voters in the transfer areas to vote in their elections

for members of the school board. As of the current school year, four of the township schools are receiving kindergarten pupils from the transfer areas. Transfer students participate fully in extracurricular activities, and are furnished transportation to and from school for such purpose. In short, for all practical purposes, the transfer areas are integrated into their respective townships. The Court sees no reason having to do with desegregation or education why this should change, and IPS has advanced none. To make matters clear, the Court orders that the transfer for educational purposes of African-American students, including kindergarten pupils, residing in the existing transfer areas be permanent. The transfer areas are specifically described in the maps attached to and made a part hereof, except for a small tract in Warren Township area E-1 east of Emerson Avenue between 40th and 42nd Streets, more particularly described in LWW Exhibit 1, received in evidence at the hearing of March 2, 1981.

The townships may have somewhat different methods for electing or selecting the members of their respective school boards. Whatever that method is, registered voters in the transfer districts should have the same rights to vote for the members of such boards as are enjoyed by citizens resident in such townships, respectively.

With respect to kindergarten, the Court finds that each of the transferee school districts should offer African-American kindergarten age children residing in their respective transfer areas the same opportunity to attend kindergarten as is afforded to children resident in such districts. Transportation to and from school will

be furnished by the transferee districts. The option for a child to attend kindergarten in either IPS or its transferee district is rescinded.

The present orders relating to the financing of the inter-district remedy shall be and remain in full force and effect. There may be a simpler way to handle the distribution of funds from the State, and the Court will give expedited consideration to any suggestions in this regard.

Dated this 27th day of February, 1997.



S. Hugh Dillin, Judge

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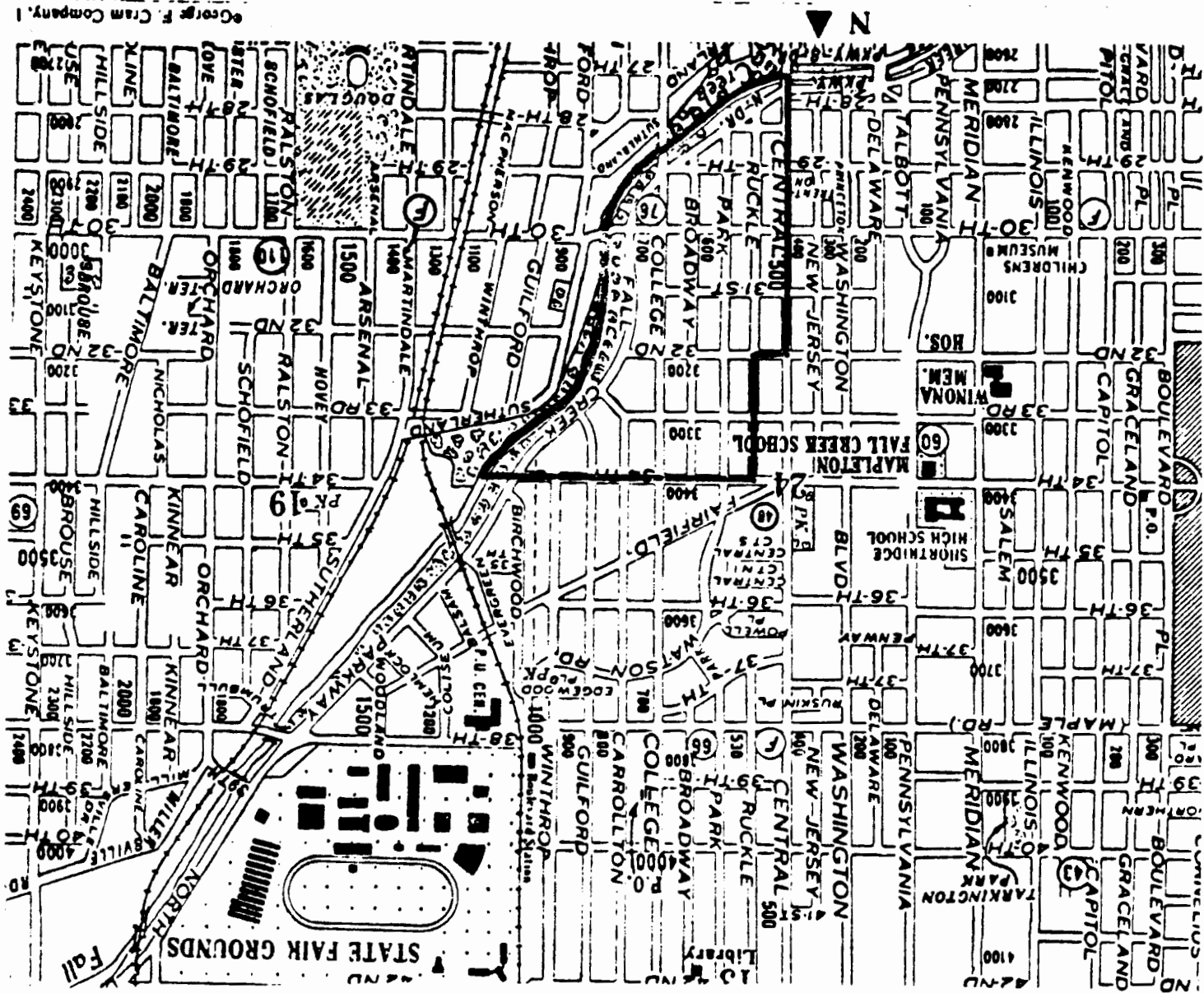
BOUNDARY DESCRIPTION

DECATUR TOWNSHIP

Beginning at the intersection of East 34th Street and Ruckle Street, east on 34th Street to Fall Creek; southwest along Fall Creek to Central Avenue; north on Central to East 32nd Street; east on 32nd to Ruckle Street; north on Ruckle to East 34th Street, the point of beginning.

All parts of the boundary line having street (including avenue, lane, drive, etc.) designations are to be interpreted as in the middle of (the street) unless described otherwise.

1/19/81



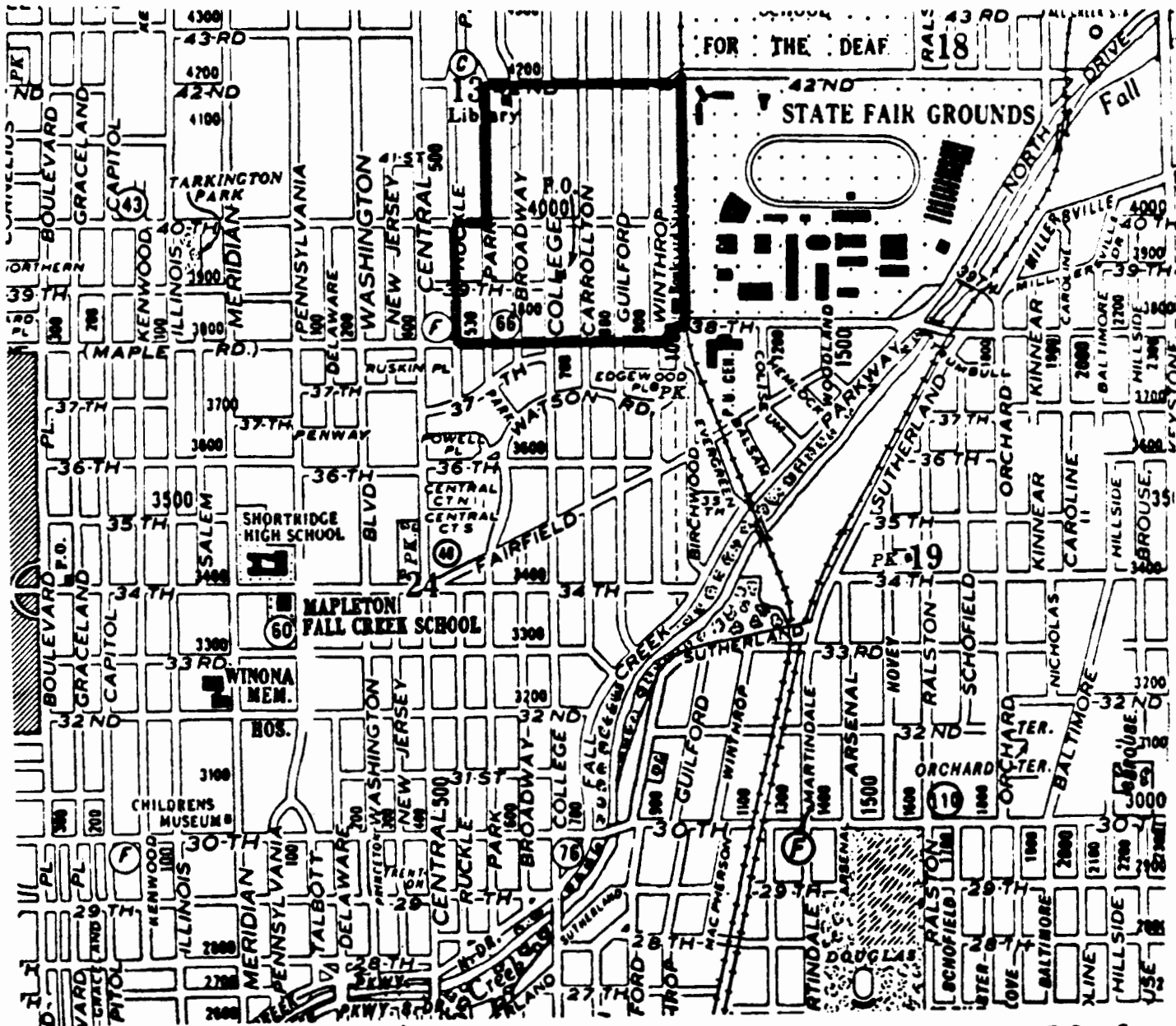
FRANKLIN TOWNSHIP
BOUNDARY DESCRIPTION

TRANSFER AREA B

Beginning at the Intersection of East 42nd Street and Park Avenue, east on 42nd to the Monon Railroad; south along the Monon Railroad to East 38th Street; west on 38th to Ruckle Street; north on Ruckle to 40th Street; east on 40th to Park Avenue; north on Park to 42nd Street, the point of beginning.

All parts of the boundary line having street (including avenue, lane, drive, etc.) designations are to be interpreted as in the middle of (the street) unless described otherwise.

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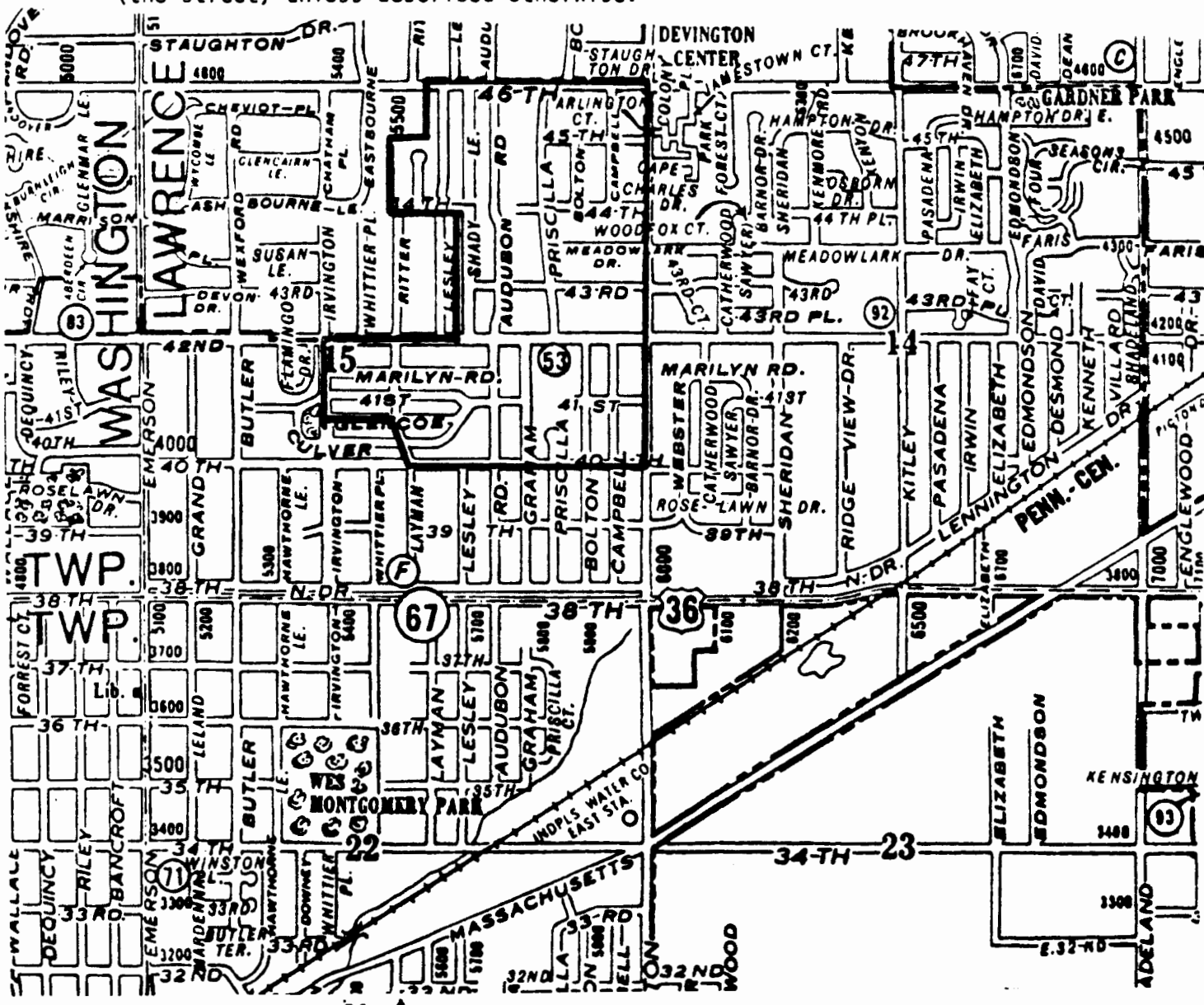
LAWRENCE TOWNSHIP

BOUNDARY DESCRIPTION

TRANSFER AREA C

Beginning at the Intersection of East 46th Street and Lesley Avenue, east on 46th to Arlington Avenue; south on Arlington to East 40th Street; west on 40th to Ritter Avenue; north on Ritter to Glencoe Street; west on Glencoe to Irvington Avenue; north on Irvington to East 42nd Street; east on 42nd to Lesley Avenue; north on Lesley, neither side included, to East 44th Street; west on 44th to Ritter Avenue; north on Ritter, both sides included, to 4500 north; east, including all properties fronting on Ritter, to Lesley Avenue; north on Lesley, both sides included, to East 46th Street, the point of beginning.

All parts of the boundary line having street (including avenue, lane, drive, etc.) designations are to be interpreted as in the middle of (the street) unless described otherwise.



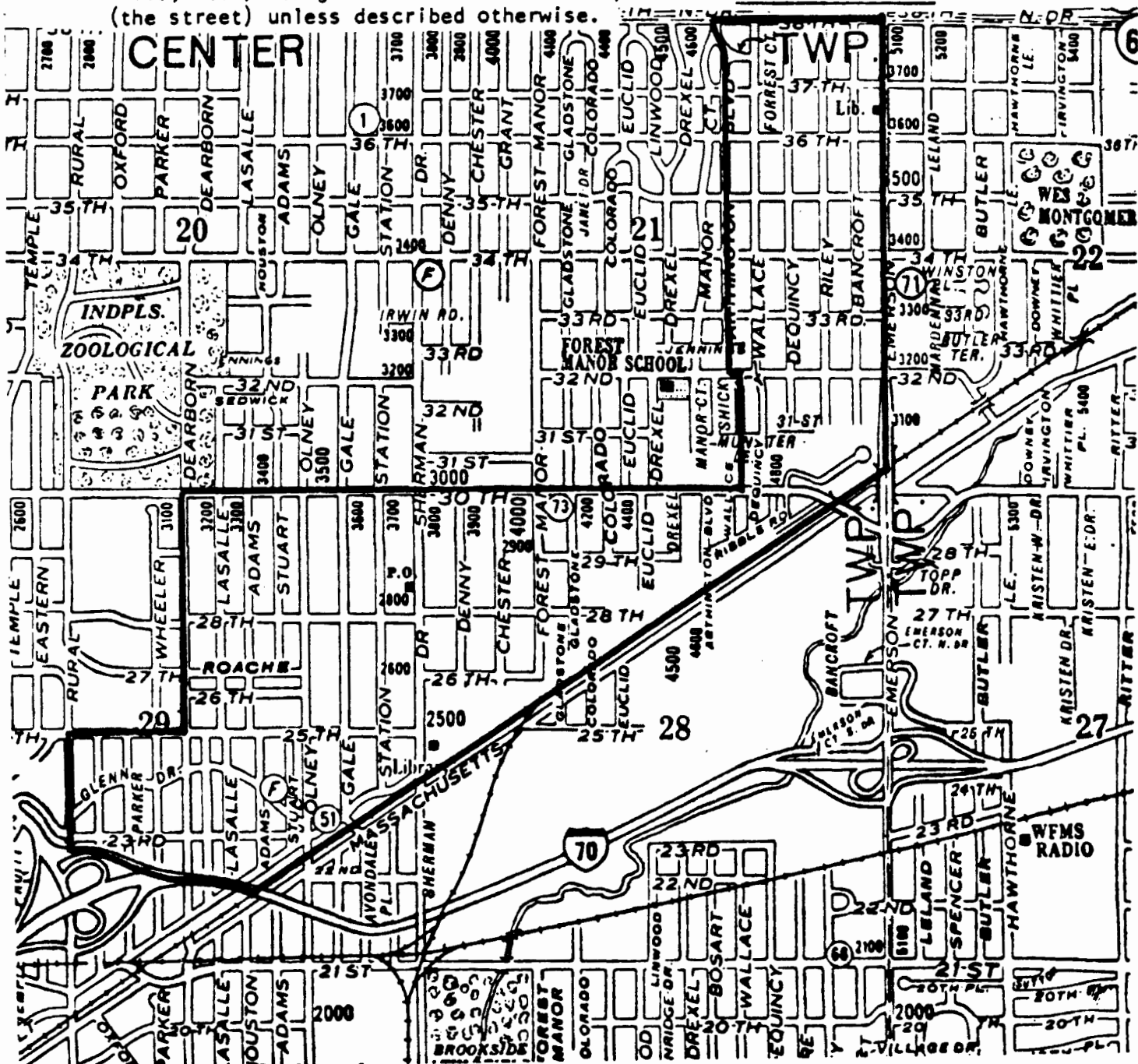
PERRY TOWNSHIP

BOUNDARY DESCRIPTION

TRANSFER AREA D

Beginning at the intersection of East 38th Street and Arthington Boulevard, east on 38th to Emerson Avenue; south on Emerson to the Penn Central Railroad; southwest along the railroad to Interstate 70; west along Interstate 70 to Rural Street; north on Rural to East 25th Street; east on 25th Street to Dearborn Street; north on Dearborn to East 30th Street; east on 30th to Arthington Boulevard (extended); north on Arthington (extended) and Arthington Boulevard, to East 38th Street, the point of beginning.

All parts of the boundary line having street (including avenue, lane, drive, etc.) designations are to be interpreted as in the middle of (the street) unless described otherwise.



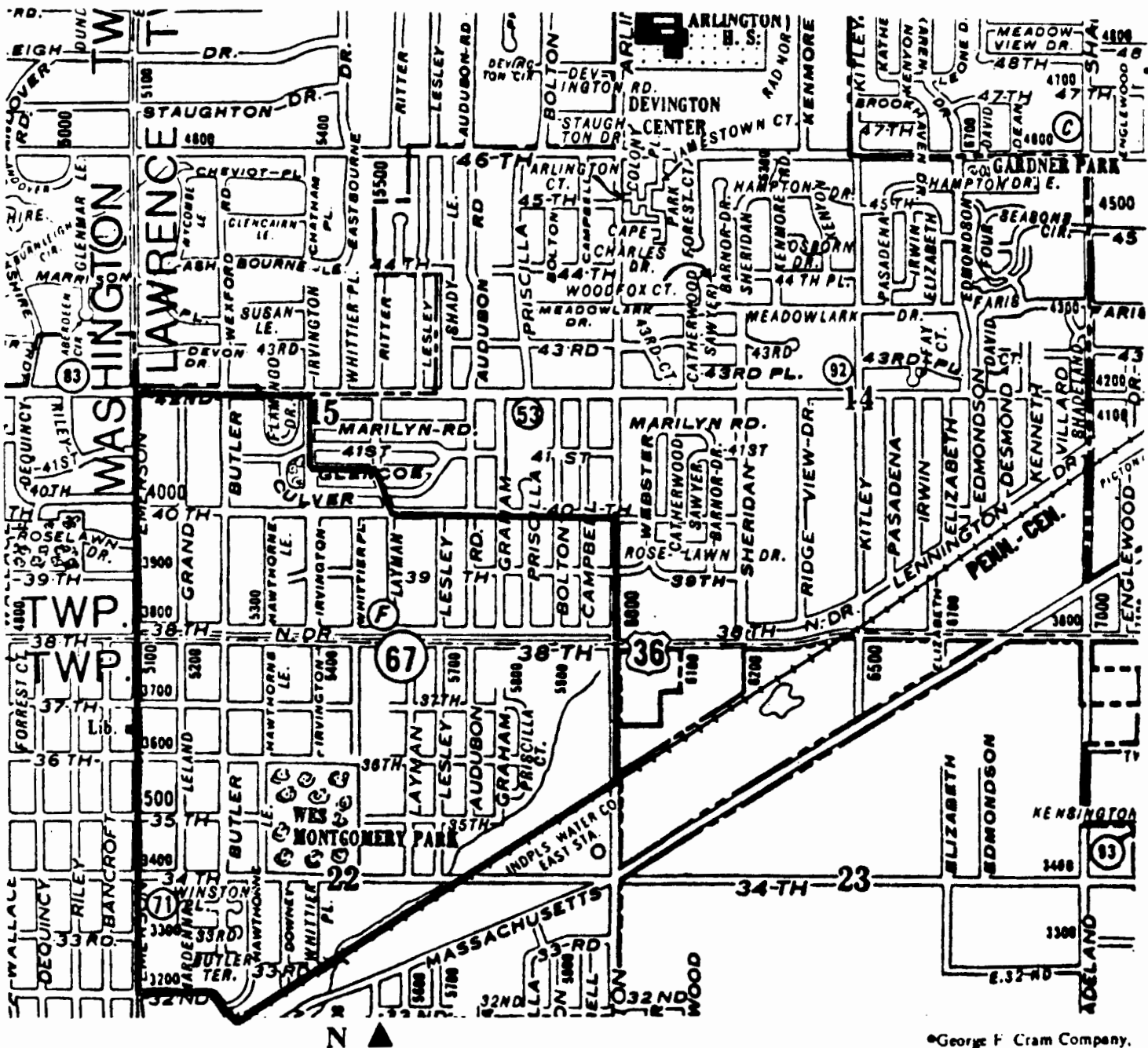
WARREN TOWNSHIP

BOUNDARY DESCRIPTION

TRANSFER AREA E-1

Beginning at the Intersection of East 42nd Street and Emerson Avenue, east on 42nd to Irvington Avenue; south on Irvington to Glencoe Street; east on Glencoe to Ritter Avenue; south on Ritter to East 40th Street; east on 40th to Arlington Avenue; south on Arlington to the Penn Central Railroad; southwest along the railroad to East 32nd Street; west on 32nd to Emerson Avenue; north on Emerson to East 42nd Street, the point of beginning.

All parts of the boundary line having street (including avenue, lane, drive, etc.) designations are to be interpreted as in the middle of (the street) unless described otherwise.



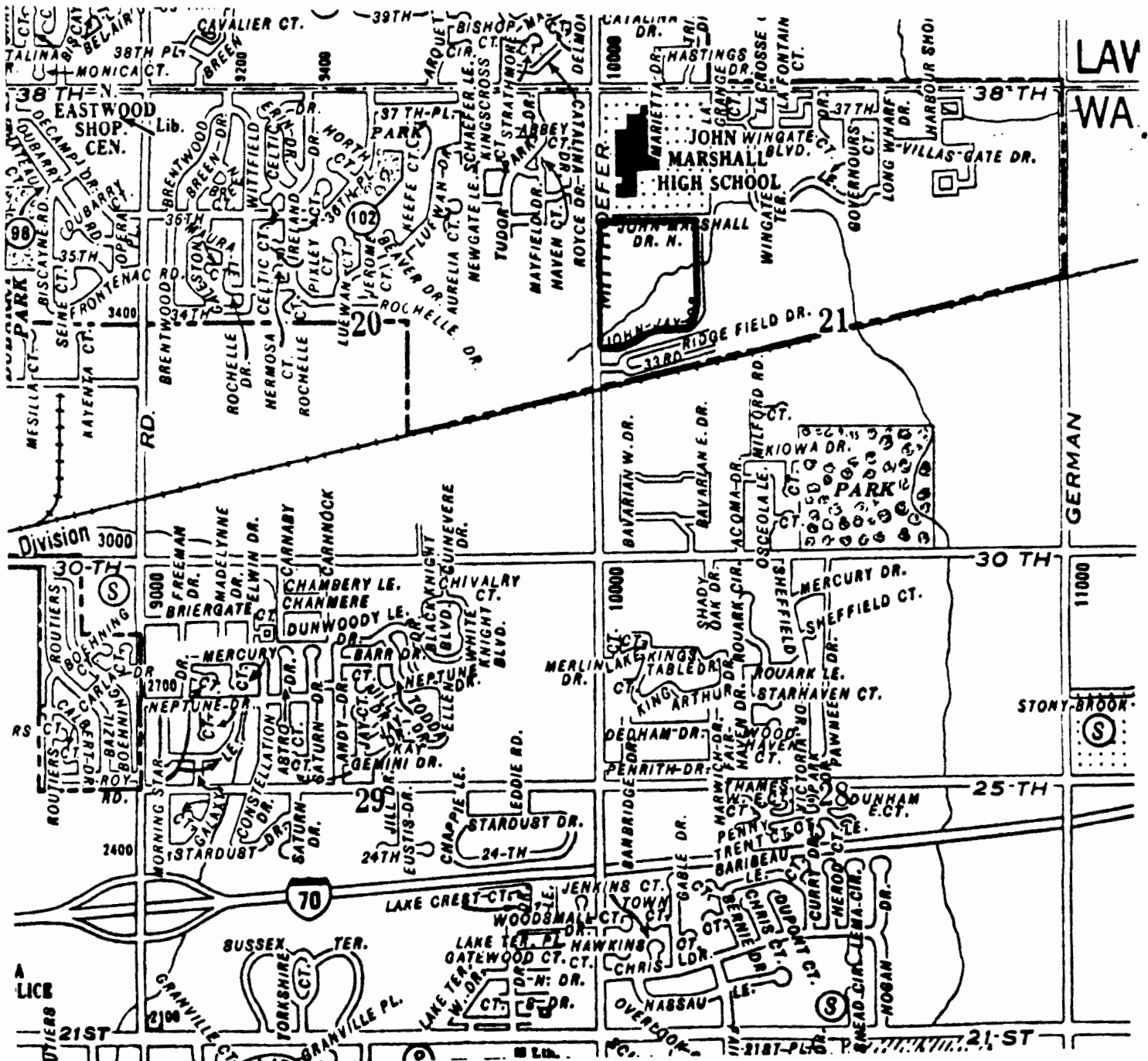
WARREN TOWNSHIP

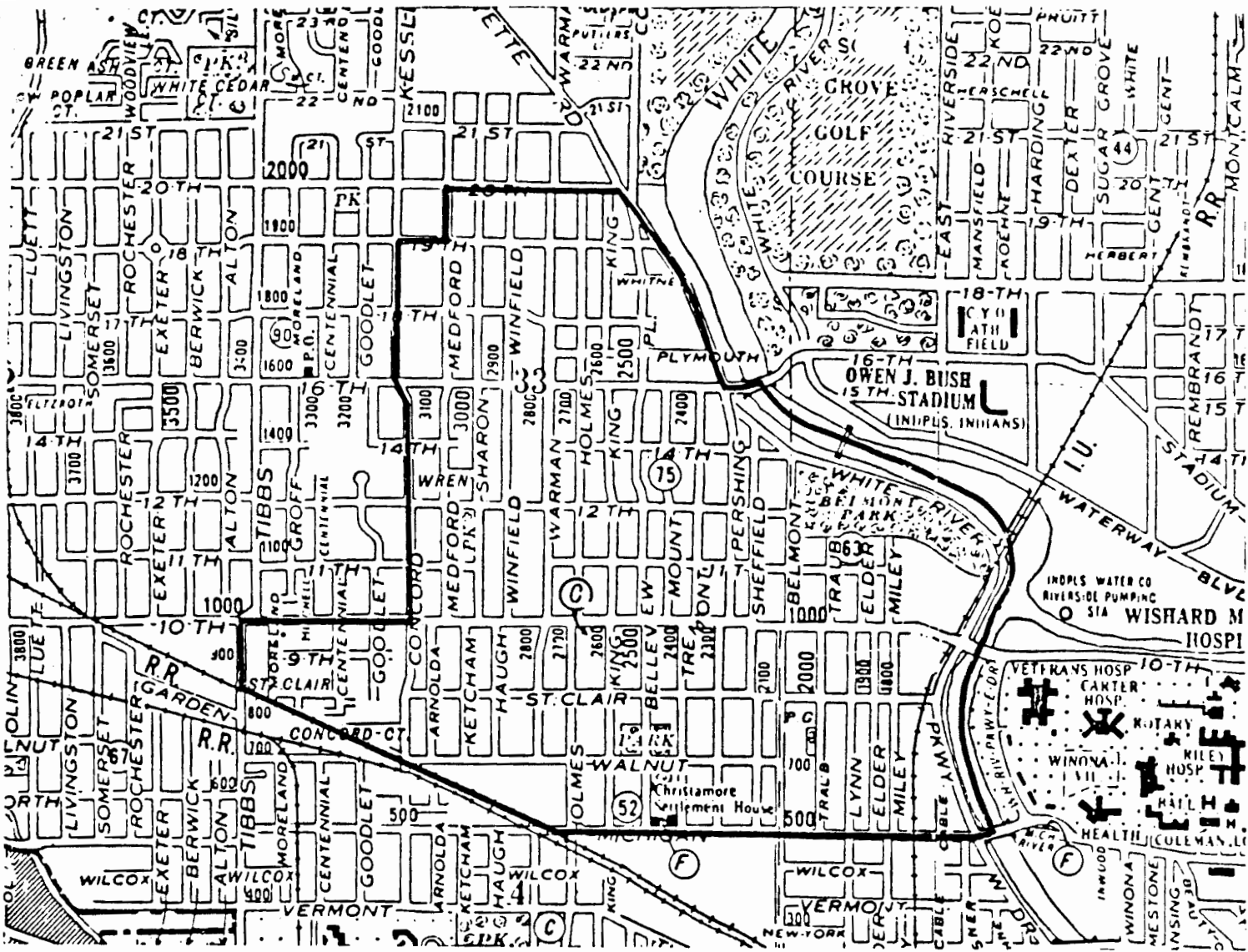
BOUNDARY DESCRIPTION

TRANSFER AREA E-2

Beginning at the intersection of John Marshall Drive North and Mitthoefer Road, east on John Marshall to John Jay Drive; south and east on John Jay to Mitthoefer Road; north on Mitthoefer to John Marshall Drive North, the point of beginning.

All parts of the boundary line having street (including avenue, lane, drive, etc.) designations are to be interpreted as in the middle of (the street) unless described otherwise.





WAYNE TOWNSHIP

BOUNDARY DESCRIPTION

TRANSFER AREA F

Beginning at the intersection of West 20th Street and Medford Street, east on 20th to Lafayette Road; southeast on Lafayette Road to West 16th Street; east on 16th to the White River; southeast along the White River to Michigan Street; west on Michigan to the Penn Central Railroad; northwest along the railroad to Tibbs Avenue; north on Tibbs to West 10th Street; east on 10th to Concord Street; north on Concord to West 19th Street; east on 19th to Medford Street; north on Medford to West 20th Street, the point of beginning.

All parts of the boundary line having street (including avenue, lane, drive, etc.) designations are to be interpreted as in the middle of (the street) unless described otherwise.